

Memorandum



Date: March 21, 2006

To: Honorable Chairperson Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(A)

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

Subject: Approval of Purchase or Leasehold Interest of Opa-locka Aviation Group Relating to Development Lease Agreement at Opa-locka Airport and Approval of Related Purchase and Release Agreement

RECOMMENDATION

It is recommended that the Board adopt the attached resolution approving the purchase by Miami-Dade County (County) for \$20 million of a leasehold interest held by Opa-locka Aviation Group (OAG) in certain property located at Opa-locka Airport which is owned by the County and leased to OAG pursuant to a Development Lease Agreement (Leasehold Interest) and approving a related Purchase and Release Agreement, in order to enable the County to recover the leased property and develop it for general aviation activities.

BACKGROUND

Pursuant to Resolution No. R-864-99, adopted on July 27, 1999, this Board approved a Development Lease Agreement (Agreement) between the County and Stagecoach Aviation OPF LLC, allowing for the development of the airport for commercial aviation use. Stagecoach subsequently changed its name to OAG. The Agreement covered 240 acres of aviation property in the immediate vicinity of the primary runway and taxiways of Opa-locka General Aviation Airport (OPF). The term of the agreement was for a potential period of ninety (90) years for each Phase of Development, starting as of the Date of Beneficial Occupancy of the first improvement constructed in a respective phase.

OAG's chief purpose was to develop OPF as a commercial airport, primarily for low-cost air carriers and international charter air carriers operating to and from Europe. The subject 240 acres make up the bulk of property at OPF that remain useable for such aviation or aeronautical activities.

The Agreement required approval of the Federal Aviation Administration (FAA). Immediately after the Agreement was signed on August 9, 1999, OAG and Aviation staff worked closely together to obtain FAA approval. In a series of letters beginning in 2000, FAA expressed its concerns over the Agreement and as a result of their continued disapprovals, OAG could not proceed with its development plan and in turn, the County did not receive any rents from the 240-acre parcel.

On April 24, 2001, the Board approved Resolution No. R-409-01 which directed county staff not to pursue any amendments to the Comprehensive Development Master Plan or Aviation System Plan that would permit commercial air carrier aircraft operations at OPF and instructed all actions to cease towards the establishment of OPF as a commercial airport, such as seeking certification under Part 139 of the FAA Regulations.

The Board had the discretion under the Agreement to take this action. The result of the Board's action was that OAG could no longer develop the 240-acre parcel for commercial aviation activities. Instead, OAG was left with the right to develop the 240-acre parcel for general aviation uses for the stated 90-year period of time.

Meanwhile, the FAA's continued disapprovals of the Agreement continued to hamper any effective development of the property. In a letter dated May 11, 2004, the FAA indicated agreement with OAG's Phase 1 development schedule, encouraging the Aviation Department to consider entering into a lease for only the 48 acres that would be needed for this Phase 1 development, with the lease lasting "closer to a 50-year duration." The Aviation Department, based on FAA's letter, advised OAG that the Agreement would have to be changed pursuant to the Agreement's FAA-approval clause, so as to reduce the Agreement to a 48-acre parcel with a 50-year term.

Subsequently, the Aviation Department received a letter dated March 1, 2005, from the FAA's Washington, D.C., office in which the FAA stated, "We do not view the FAA's role to be that of an approving party to the County's leases." The FAA's local office in Orlando had been routinely "approving" or "disapproving" leases in the past, so the March 1 letter caused considerable uncertainty as to whether the FAA-approval clause in the Agreement was even effective. If it was not effective, then OAG would continue as a lessee of the entire 240-acre tract for 90 years, and not just the 48-acre tract for 50 years as the Aviation Department claimed based on the FAA's letter of May 11, 2004. The legal consequences of the FAA approval clause—and the FAA actions under the clause would likely require litigation to determine.

During the course of the Aviation Department's efforts to work with the FAA and OAG, numerous parties contacted the Aviation Department indicating an interest in developing at Opa-locka Airport but an unwillingness to enter into a sublease arrangement with OAG. In order to allow development to proceed at Opa-locka Airport, the Aviation Department sent a notice to OAG on November 4, 2004, exercising its rights pursuant to Article 2.10 of the lease to take back certain portions of the leased premises needed for aviation development unless OAG, as required by the Agreement: 1) advised the Aviation Department within sixty (60) days that it wished to keep the premises in its leasehold 2) began to pay ground rent, and 3) filed application for building permits to begin construction of appropriate facilities.

OAG responded to the notice by stating that it had indicated to the County at every juncture that it wished to proceed with its development, that the County had failed or refused to diligently pursue FAA approval, and that the County stood in default of many of its other lease obligations, some of which were conditions precedent to the obligations of OAG. Aviation Department staff met with OAG principals in December 2004 and discussed potential ways to cooperatively develop the leased premises at OPF. At this meeting, both parties agreed to an expedited schedule that allowed OAG another opportunity to enter into subleases for the development of OPF.

However, no sublease agreements were reached with interested parties. As a result of the County's notice of November 4, 2004, to take back designated portions of OAG's premises, the Aviation Department proceeded to negotiate a long-term development lease with Miami Executive Aviation (MEA) for 20.97 acres for MEA's design, construction, and subsequent use of a hangar storage and aircraft maintenance facility on a 4.34-acre site that is adjacent to MEA's existing 16.63-acre site at Opa-locka Airport (OPF). Both sites being located on OAG's leasehold premises which had been reclaimed by MDAD pursuant to the terms of the Agreement. The lease with MEA allowed MEA to make permanent investments in its current facilities and increase its hangar storage and services capability through the construction of a 40,000-square-foot hangar and support office space. These new facilities would be integrated into the company's Fixed Base operation to provide more flexibility for the provision of aircraft maintenance and storage services. On May 19, 2005, the Board approved the long-term lease with MEA, notwithstanding protests by representatives of OAG at the May 17, 2005, BCC meeting. On June 1, 2005, counsel for OAG notified the Aviation Director and the County Attorney's Office that OAG considered the County to have engaged in behavior constituting a breach of

the Lease Agreement and requested mediation as provided in the lease. The alleged breach centered on both:

- (1) the April 17, 2001, BCC resolution directing county staff not to pursue any amendments to the County's CDMP and Aviation System Plan that would permit commercial air carrier aircraft operations at Opa-locka General Aviation Airport with instructions to cease all actions toward the establishment of OPF as a commercial airport, and
- (2) the BCC approval of the MEA lease over the objections of OAG.

Financial Analysis

The premises covered by the OAG lease total approximately 240 acres in the center of the airport comprising most of the airfield-accessible areas at OPF. A map of the leasehold area is attached. The facilities to be constructed were broadly described as aviation facilities including aircraft maintenance/storage hangars, shops, aircraft pavement and other aviation facilities. Under the provisions of the lease, the term of the lease was effective on a phase-by-phase basis with 50-year terms commencing for each phase as they are developed.

The lease also contained 4 successive optional renewals of 10 years each. More importantly, ground rent commenced only upon the development of property and was effective only for the portion of the premises that was developed. The lease contained no requirements for timing or amount of capital investment. Under these provisions, OAG is able to lock up land for an indefinite period of time. By locking up these premises the best opportunities for aviation-related development at OPF are suppressed.

While discussing OAG's claim in the context of a mediation proceeding pursuant to terms of the Agreement, the parties concluded that the County's purchase of OAG's entire leasehold interest under the Agreement would be an acceptable solution. The amount of twenty million dollars was fixed as a reasonable purchase price for the leasehold interest. The purchase price would be paid from Aviation revenues in five (5) individual payments of four million dollars each over four years, with no interest accruing on the unpaid balance. In exchange, OAG would agree to terminate the Agreement and release the County from any claims that may have arising out of the Agreement, or out of the process by which the Agreement was approved, or from any actions taken by the County following its approval.

Of the 240 acres, the Aviation Department currently has requests for development leases for approximately 60 acres and several other requests for smaller acreage leases for the development of aircraft storage hangar facilities. With this strong demand plus a shortage of capacity at other South Florida airports, the Aviation Department staff expects reasonably rapid development of these 240 prime acres. Also, staff believes that new development would reverse the trend that caused the land rental rate at OPF to decline and then remain flat for a number of years, and should result in steady increases in land rental rates as seen generally in the South Florida area and as have occurred at Kendall-Tamiami Executive Airport. Therefore, staff believes that it is quite reasonable to expect that 60 acres (including the MEA property) of the premises could be under development within one year and would begin to generate \$418,000 annually in ground rents based on a rental rate of \$.01 above the current \$.15 per square foot rental rate. From there, staff would expect land to be leased at an additional 12 acres per year for 5 years and then gradually slow. Land rental rates are assumed to increase at \$.01 per square foot per year to \$.20 and then grow at an average of 2% annually. Land rentals for the aviation usage under this scenario would be \$379 million over the life of OAG's potential

90-year term, with a present value of \$39 million using a 5% discount rate. Under the Department's current standards for development leases, the Department would begin to receive an improvement fee no later than 30 years into the anticipated development leases and would become owner of the improvements at the expiration of the leases. The Department would then be entitled to building rents, in addition to the land rents. These potential improvement fees and facilities rents are estimated at \$76 million over the life of the lease with a present value of \$3 million.

Furthermore, after the aviation development commences, staff would expect some non-aeronautical commercial development such as restaurants to begin on the site. Commercial development has a higher land rental value, historically approximately three times that of the aviation property. Commercial development also typically generates percentage concession fees in addition to land rent. Staff expects that after five years of aviation development, it would be reasonable to expect some modest commercial development (assumes 12 acres) that would gradually increase moderately over time (assumes 36 acres after 30 years). This commercial development would be expected to bring in an additional \$202 million during the next 90 years, with a present value of \$17 million. As the rental rates at OPF increase with new development, the airport would also benefit from incremental rents on other properties leased at OPF. The incremental rent on other properties could reach \$200 million over the 90-year period, with a \$14 million present value.

Obviously, there are a number of assumptions built into this analysis and the actual revenue streams would likely vary. However, the estimated present value revenues from this described development scenario would be \$79 million, far in excess of the \$18 million present value of the \$20 million to be paid to OAG over a four year period.

An ultra-conservative scenario for development of the premises over time and only for aeronautical related development would be expected to produce \$33 million in present value revenues, plus \$4 million in collateral revenues from fuel flowage fees and incremental rents on other properties. If the proposed leasehold interest buy out does not occur, deferral of the expected revenue streams for 5 years, if the County were to litigate the matter, could represent \$17 million loss in present value revenues.

Based on the Board's action in 2001, the Airport cannot be developed as a commercial aviation airport. It must therefore be developed only as a general aviation airport. Although this purchase of OAG's leasehold interest is an unexpected expense, the Aviation Department is pleased that it can recover the property and begin the process of actively seeking general aviation tenants to develop OPF. Such development efforts by the Aviation Department will accommodate the on-going demand for general aviation facilities and activities that will meet the specific needs of the County and the aviation industry at OPF.



Deputy County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: March 21, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(A)
03-21-06

RESOLUTION NO. _____

RESOLUTION APPROVING PURCHASE OF LEASEHOLD INTEREST OF OPA-LOCKA AVIATION GROUP (OAG) ARISING UNDER A DEVELOPMENT LEASE AGREEMENT APPROVED BY THIS BOARD FOR CERTAIN PREMISES AT OPA-LOCKA GENERAL AVIATION AIRPORT FOR TWENTY MILLION DOLLARS; APPROVING AGREEMENT AND RELEASE OF LEASEHOLD INTEREST BETWEEN THE COUNTY AND OAG TO EFFECTUATE THE PURCHASE OF SUCH LEASEHOLD INTEREST; AUTHORIZING COUNTY MANAGER TO EXECUTE SUCH AGREEMENT AND ANY OTHER DOCUMENTS DEEMED NECESSARY OR REASONABLE TO ACCOMPLISH THE PURPOSES OF SUCH AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the County's purchase from the Opa-locka Aviation Group (OAG) of its leasehold interest in certain property located at Opa-locka Airport under the Development Lease Agreement that was approved by this Board in Resolution No. R-864-99, for the sum of twenty million dollars to be paid to OAG in the manner set forth in the Agreement and Release of Leasehold Interest attached hereto; approves the Agreement and Release of Leasehold Interest in substantially the form attached hereto by which the County purchases the leasehold interests of all parties in interest to the Development Lease Agreement for twenty million dollars, in exchange for which OAG and all parties having an interest in and to the premises covered by the Development Lease Agreement agree to the termination of such Development Lease Agreement and the restoration to the County of all rights, title, and interest in and to the Premises covered by such Development

Lease Agreement and release each other for all claims that have arisen or may arise under such Development Lease Agreement, with each party bearing its own costs and attorneys fees; authorizes the County Manager to execute the Agreement and all other documents deemed necessary or reasonable to accomplish the purposes of the Agreement and Release of Leasehold Interest.

The foregoing resolution was offered by Commissioner _____, who
Moved its adoption. The motion was second by Commissioner _____, and upon
being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Jose "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of March, 2006. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk.

Approved by County Attorney as
to form and legal sufficiency. TPA

Thomas P. Abbott

**AGREEMENT AND RELEASE
OF LEASEHOLD INTEREST**

THIS AGREEMENT AND RELEASE OF LEASEHOLD INTEREST is entered into as of this ____ day of _____, 2006, by and between Miami-Dade County, a political subdivision of the State of Florida ("County") and Opa-locka Aviation Group, LLC ("OAG"), formerly known as Stagecoach Aviation OPF LLC ("Stagecoach"), and Matthew Hudson, an individual and principal member of both OAG and Stagecoach (collectively, all three parties known as "OAG"),

WHEREAS, effective as of August 9, 1999, the County and Stagecoach entered into a Development Lease Agreement (the "Agreement") under which Stagecoach was given the right to develop certain property at Opa-locka Airport ("OPF"), including the right to develop the leased premises in part for commercial aviation purposes, in exchange for rents and other considerations payable to the County as provided in such Agreement; and

WHEREAS, the Agreement covered approximately 240 acres of property at OPF that OAG could develop over a potential ninety (90) year lease period and provided further that it was conditional upon certain approvals being given; and

WHEREAS, in Resolution No. R-409-01, the County exercised its discretion contained in the Agreement to determine that it would not be in the County's best interest to permit OPF to be used for commercial aviation purposes; and

WHEREAS, OAG has asserted a claim against the County that the County has breached the contract in various regards; and

WHEREAS, OAG is unable to develop the leased premises for commercial aviation purposes based on the County's 2001 Resolution, and the County is desirous of recovering the leased premises so that the County may actively seek tenants for the premises so that development at OPF may go forward to meet the needs of the general aviation industry and the County; and

WHEREAS, the parties have agreed that in exchange for the County's purchase of OAG's leasehold interests under the Agreement, the Agreement shall be terminated and OAG will forever release the County from all liabilities and claims thereunder;

NOW THEREFORE, in consideration of the foregoing Premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. County's Purchase of OAG's Leasehold Interests. (a) The County hereby agrees to purchase all right, title, and interest of OAG, Stagecoach, Matthew Hudson, and their successors and assigns, in, to, and under the Agreement for the sum of twenty million dollars (\$20,000,000.00). The County shall make a payment to OAG in the sum of four million dollars (\$4,000,000) by no later than the first business day following the effective date of the resolution approving this Agreement and Release of Leasehold Interest, including the expiration of any period of time for reconsideration of such resolution (the "Effective Date"), and shall thereafter make a payment of four million dollars (\$4,000,000) on the anniversary date of such first payment that falls in the four subsequent years, namely 2007, 2008, 2009, and 2010. Unless otherwise advised, each of the County's five checks of four million dollars each shall be made payable to "Ferrell Law, P.A. Trust Account" and mailed to the then-current address of the Ferrell Law firm.

No interest on the twenty million dollars or any portion thereof shall be due to OAG or payable by the County on any such payments; provided, however, if the County fails to make any payment on or before the due date hereunder and fails to make such payment within thirty (30) days of its receipt of written notification from OAG or an assignee hereunder of such failure to make the payment, then the County shall be liable for (i) payment of interest on such unpaid amount at a rate of one percent (1%) above the Wall Street Journal prime interest rate to be computed for each month of delay and pro rated on a daily basis, and (ii) OAG's attorneys fees to secure such payment.

(b) The payments due hereunder shall be payable solely from Aviation Department funds and not the general fund of the County; provided, however, the County covenants that in each year it will either include in the Aviation Department's annual budget for the County's fiscal years ending on September 30 of the years 2007, 2008, 2009, and 2010 the four million dollar amount due to OAG during each of such fiscal years, or otherwise provide for funding of the payment.

2. Purchase Effective on the Effective Date of the County's Resolution

Approving this Agreement. The County's purchase of OAG's leasehold and all other rights under the Agreement and OAG's release of the County for all claims under the Agreement shall be effective as of the Effective Date of the Board's Resolution that approves this Agreement and Release of Leasehold Interest.

3. Termination of Agreement. The parties agree that the Agreement and all rights, responsibilities and obligations of each party thereunder, shall stand terminated and be of no further effect as of the Effective Date, and that as of the Effective Date the County shall be restored to all rights, title and interest in and to the Premises leased

thereunder as owner of such Premises and OAG shall have no further rights, title and interest in and to the Premises in any respect.

4. Assignability of Agreement and Release of Leasehold Interest. The County agrees that OAG's rights under this Agreement and Release of Leasehold Interest shall be fully assignable and agrees that it shall make the balance of payments due hereunder to whatever party is designated in writing by OAG as the assignee, with the right of any such assignee to designate a successor assignee hereunder.

5. Mutual Release. As of the Effective Date, the parties hereby release each other and their respective officers, directors, members of the Board of County Commissioners and their staff, employees, subsidiaries and affiliates, and successors and assigns (collectively and with respect to each Party, the "Released Parties") from any and all past, present and future claims, demands, actions, causes of action and liability whatsoever, that each Party now has, ever had or hereafter can, shall or may have, against the other's Released Parties, whether known or unknown, fixed or contingent, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, or accrued or unaccrued, and whether based on contract, tort, statute, or other legal or equitable theory of recovery, concerning, relating to, or arising out of (a) the Agreement, (b) all contact between and among the Released Parties prior to the Board's approval of the Agreement, (c) the approval of the Agreement, and (d) the actions of the parties following approval of the Agreement that relate in any way to the foregoing. To the maximum extent permitted by law, the Parties waive all rights under any statutory or common law provision that limits or purports to limit the scope or effect of a general release whether due to lack of knowledge or otherwise.

6. **Covenant Against Other Parties' Interests.** OAG covenants and agrees that it has granted to no other party any right, title, or interest in or to the Agreement or the Premises thereunder and that the parties signing below on behalf of OAG are the sole parties having any right, title or interest under and to the Agreement or the Premises.

7. **Application of Florida Law.** This Agreement and Release of Leasehold Interest shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement and Release of Leasehold Interest shall be in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereunder shall be brought in an appropriate federal or state court located in Miami-Dade County.

8. **Costs.** Each party shall bear its own costs and attorneys' fees in this matter, and County's exclusive responsibility to OAG shall be the payment of the amounts in the manner specified in Section 1 above.

9. **Entire Agreement.** This Agreement and Release of Leasehold Interest sets forth the entire agreement between the parties and there are no promises or understandings other than those stated herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement and Release of Leasehold Interest to be executed by duly authorized representatives thereof, who warrant their authorization to bind their principals hereto.

MIAMI-DADE COUNTY

BY: _____
County Manager

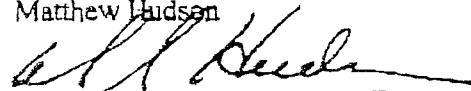
Opa-locka Aviation Group, LLC, f/k/a
Stagecoach Aviation, BPF LLC

BY:  _____
Matthew Hudson

ATTEST:

By: _____
Deputy Clerk

Matthew Hudson



In his Individual Capacity